IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 11238 OF 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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CHHOTUBHAI GOVANBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & ANR. - Respondent(s)

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Appearance :
SHRI M.A. KHARADI for Petitioner(s).
SHRI HUKUM SINGH, ASST. GOVERNMENT PLEADER for Respondent(s): 1-3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 01/02/2007

ORAL JUDGMENT

1. The short facts necessary for disposal of the present Writ Application are that since after coming into force of the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as “the Ceiling Act” for the

sake of convenience and brevity), the present petitioner filed his form-cum-return submitting, *inter alia*, that he possessed 86 Acres and 26 Gunthas land, but, as 63 Acres was *khar* land, the same would not fall within the mischief of 'the land' and as the same would be exempted land under Section-3 of the Ceiling Act, he was not possessed of excess land. It was also submitted that in view of Section-6(3B) of the Ceiling Act, the petitioner would be entitled to additional unit and lastly, it was submitted that the land was not perennially cultivated, rather it was absolutely dry land and, therefore, an order be passed in his favour that he did not possess excess land.

1.1 The learned Mamlatdar and ALT, *vide* his order dated 28th April, 1986, held that the land was not *khar* land, the petitioner was not entitled to any additional unit and the land was rightly considered to be cultivable land. He, accordingly, held that the petitioner was possessed of the excess land to the extent of 51 Acres and 1 Guntha. The said order was confirmed in Appeal Case No.324/1986 on 17th March, 1987 by the Deputy Collector. However, the said order came to be challenged by the present petitioner before the Gujarat Revenue Tribunal in Revision Application No.TEN/BS/155/87, the Tribunal, *vide*

its judgement and order dated 22nd August, 1991, partly allowed the appeal, despite holding that the petitioner was not entitled to one extra unit and the land was cultivable, remanded the matter to the Mamlatdar-cum-ALT to decide that whether the land was *khar* land or not.

1.2 Since after the remand, the parties were allowed to lead the evidence, documentary and oral, the petitioner examined the District Agricultural Officer, who deposed in favour of the petitioner and in his turn, stated that the land was *khar* land, it was good for nothing, it could not be cultivated nor could it be made cultivable as salt was oozing out. However, the Mamlatdar, rejecting all the pleas and defences raised by the present petitioner *vide* his order dated 25th September, 1992 in Remand Case No.13/1991, held that the petitioner was in possession of excess land admeasuring 54 Acres and 6 Gunthas.

1.3 The aforesaid order was modified by the Deputy Collector in Ceiling Case No.3 of 1993, disposed of on 25th May, 1993, the Deputy Collector held that the petitioner was in possession of 50 acres and 20 Gunthas excess land. The petitioner then challenged the said order before the Gujarat Land Revenue Tribunal, which, by

its order dated 20th August, 1993 in Revision Application No.TEN/BS/83/93, dismissed the Revision Application. The petitioner is now before this Court.

2. Shri Kharadi, learned Counsel for the petitioner, submits that the authorities were unjustified in not appreciating that the land would not fall within the mischief of the definition of 'land', as provided under Clause-17 of Section-2 of the Ceiling Act. His submission is that as the land is *khar* land, the same could not be taken to be the land for the purpose of ceiling and the petitioner was entitled to absolute exemption. His further contention is that the question relating to extra unit under Section-6(3B) of the Ceiling Act was not considered and the question of cultivability of land was also not taken into consideration.

3. Shri Hukum Singh, learned Counsel for the respondent-State, on the other hand, submits that the questions relating to extra unit and cultivability of the land were not kept open in the remand order, which, till date remains unchallenged, and under the circumstances, the only question, which was required to be decided by the Mamlatdar, was that whether the land was *khar* land, as provided under the Gujarat Khar Lands Act, 1963

(hereinafter referred to as “the Khar Lands Act” for the sake of convenience and brevity) or not. His further submission is that Section 3(1)(aa) of the Ceiling Act cannot be read *de hors* the provisions of the Khar Lands Act.

4. I have heard the parties at length and have perused the records.

5. Section 2(17) of the Ceiling Act provides the definition of land. According to the definition, the land, which can be put under cultivation, would be deemed to be the land, in any case, the land falling under Section-3 of the Ceiling Act, would be taken to be exempted land. Section 3(1)(aa) of the Ceiling Act provides that any *khar* land, as defined under the Khar Lands Act, would be taken to be exempted land. For application of Clause-(aa) of Section 3(1) of the Ceiling Act, one has to prove that the land is *khar* land, as provided under the provisions of the Khar Lands Act. A submission by somebody that the land was *khar* land would not be sufficient and no evidence would satisfy the requirement of law, which provides that an application on behalf of the holder of the land is required to be made before the Collector, who, under the provisions of the

Khar Lands Act, shall make an inquiry and shall thereafter certify that the land is *khar* land. Undisputedly, no such application was ever filed by the petitioner at any time before 1st April, 1976, as required under the Ceiling Act, and if that be so, at this stage, it cannot be said that the land was *khar* land. It was, however, submitted by Shri Kharadi that in a given case, where the land becomes *khar* land subsequent to 1st April, 1976, then, any holder would not be in a position to make the application before 1st April, 1976 and under the said circumstances, the land must be deemed to be exempted land.

6. The argument is misconceived, firstly because if the land is not *khar* land on 1st April, 1976, the provisions of Section 3 of the Ceiling Act would not provide exemption to such land because the land would not be an exempted land under the provisions of the Act, and secondly, the land can be exempted if it is held to be *khar* land on an application made to the authority prior to 1st April, 1976. In either of the situations, the petitioner is required to satisfy the Court that prior to 1st April, 1976, the land was *khar* land, he had made an application to the Collector under the provisions of the Khar Lands Act and has obtained an order in his favour.

On this ground, I am unable to hold that the authorities were unjustified in holding that the land was not *khar* land.

7. So far as the other questions raised by Shri Kharadi are concerned, the same cannot be allowed to be agitated in view of the earlier order of remand, which had sealed the fate of the petitioner, and the petitioner, feeling satisfied by the said order, did not propose to challenge the correctness, validity and propriety of the said order.

8. After taking into consideration the totality of the circumstances and the provisions of law, I hold that there is no scope for any interference in this matter.

9. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S.Garg, J.]

*kamlesh**